

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DEANNA J. LYNN</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 1,014,028
<b>ATCHISON CASTING CORPORATION</b>	)	and 1,014,029
Respondent	)	
AND	)	
	)	
<b>PACIFIC EMPLOYERS INS. CO. and</b>	)	
<b>NATIONAL UNION FIRE INS. CO.</b>	)	
Insurance Carriers	)	

**ORDER**

Claimant appeals the March 15, 2004 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was denied benefits after the Administrative Law Judge determined that she failed to provide notice of accident in a timely fashion for the first injury, under Docket No. 1,014,028. She was denied benefits for a second accidental injury from October 12 through October 15, 2003, in Docket No. 1,014,029, after the Administrative Law Judge determined that she had not proven that she suffered accidental injury in October 2003 and further failed to prove that she provided timely notice of said accident.

**ISSUES**

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment in Docket No. 1,014,029, for a series of accidents beginning October 12, 2003, and running through October 15, 2003?
- (2) Did claimant provide timely notice of accident for either of the alleged accidental injuries?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant alleges two series of accidents to her left knee. The first series, in Docket No. 1,014,028, began in January 2003, running through February 15, 2003, while driving a forklift. Claimant testified that the forklift job aggravated her left knee condition, causing her to seek medical care. The second series of accidents is alleged from October 12, 2003, through October 15, 2003, in Docket No. 1,014,029, when claimant was returned to the forklift driving job, again aggravating her knee condition.

Respondent denies that claimant suffered the accidental injuries and further denies that claimant provided timely notice of either accident.

Claimant first sought medical treatment for back pain, which, according to her testimony, fully resolved. She testified that the knee pain began within a few days of the onset of back pain.

Medical reports placed into evidence do not support claimant's contentions. A February 24, 2003 medical report of Sabrina J. Schmidt, M.D., claimant's family doctor, indicates that claimant's knee began hurting after spending a great deal of time on her feet on a Saturday and Sunday, three weeks prior to the examination.<sup>1</sup> There is no indication in that report of any work-related connection to claimant's injuries.

The medical report of Gary D. Boston, M.D., dated April 15, 2003, indicates no specific injury or trauma.<sup>2</sup> Attending Physician's Statements from April 2, 2003, May 13, 2003, and May 28, 2003, all indicate that claimant's condition did not arise out of employment.<sup>3</sup> Additionally, the Report By Injured Employee,<sup>4</sup> dated May 29, 2003, and signed by claimant, indicates a March 6, 2003 date of accident. It also indicates that the matter was reported on either March 4 or March 6, 2003, to Robert (Bob) Jones, her supervisor. However, in the Supervisor's Accident Investigation Report (included in Respondent's Exhibit E), prepared by Mr. Jones and dated June 4, 2003, Mr. Jones denied

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<sup>1</sup> P.H. Trans., Resp. Ex. B.

<sup>2</sup> P.H. Trans., Resp. Ex. C.

<sup>3</sup> P.H. Trans., Resp. Ex. D.

<sup>4</sup> P.H. Trans., Resp. Ex. E.

that claimant ever reported an accident to him. And finally, claimant alleges that both accidental injuries were reported to the plant nurse, Karen K. Neill. Ms. Neill did not testify in this matter, but she did file an affidavit with the Division of Workers Compensation on March 9, 2004.

Claimant testified that after the October 2003 incident, she had several conversations with Ms. Neill regarding the forklift and the connection between the forklift and her ongoing knee problems. Claimant was emphatic, during her cross-examination, that she spoke to Ms. Neill on several occasions in October 2003. However, in Ms. Neill's affidavit, it is noted that Ms. Neill's last date of employment with respondent was September 19, 2003, with her actual termination date being October 3, 2003, after earned vacation was used. Ms. Neill stated that at no time in October 2003, did she have any conversation with claimant on any subject.

Finally, claimant testified that she told Tom Shriwise, M.D., Brandon Sigrist (Dr. Shriwise's physician's assistant) and her other examining physicians of the connection between her knee injury and the forklift. However, none of the medical reports support claimant's contentions.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>5</sup>

K.S.A. 44-520 mandates that notice be provided to an employer within 10 days of the date of accident, stating the time, place and particulars regarding the accident. As noted by the Administrative Law Judge, claimant's May 29, 2003 Report By Injured Employee is substantially beyond the 10-day limitation set forth in K.S.A. 44-520. Even if the 75-day extended limitation, allowed if just cause is shown for the failure to timely provide notice, is utilized, claimant would still be beyond the time limits for a February 15, 2003 accident. The Board, therefore, finds that the Administrative Law Judge's determination that claimant failed to provide timely notice of accident in Docket No. 1,014,028 should be affirmed.

With regard to claimant's allegations of an accident in October of 2003, the medical reports and the affidavit of Ms. Neill do not support claimant's allegations. Claimant's emphatic testimony that she had several conversations with Ms. Neill in October of 2003 regarding her ongoing knee problems is contradicted by the Neill affidavit, which states that Ms. Neill was not even working for respondent during the month of October 2003. Therefore, if Ms. Neill is believed, those alleged conversations could not have possibly taken place. The Board, therefore, finds that claimant has failed to prove that she suffered

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<sup>5</sup> K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

accidental injury in October 2003 and further failed to provide timely notice of that accident for the alleged injuries in October 2003 in Docket No. 1,014,029. The Order of the Administrative Law Judge is affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict dated March 15, 2004, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2004.

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BOARD MEMBER

c: Mark S. Gunnison, Attorney for Claimant  
John B. Rathmel, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director